

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

THE KNOX COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -3498

Decision No. CU

372

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by THE KNOX COMPANY in the amount of \$65,094.04 based upon the asserted loss of payment for merchandise shipped to Cuba.

The evidence of record indicates that the claimant is a partnership organized under the laws of the State of California and that it qualifies as a national of the United States within the meaning of Section 502(1)(B) of the Act.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Claimant, a manufacturer of pharmaceutical products, operated under an agreement with Adolph Kates & Son (hereinafter referred to as "Kates"), a Cuban enterprise, whereby claimant shipped goods to Kates who acted as claimant's sales agent. The Cuban agent paid certain expenses on behalf of claimant, furnished inventory and sales reports, and periodically remitted to claimant amounts owed for the merchandise, less the accrued expenses.

Because of import and currency exchange measures enacted by the Cuban Government the subject agreement was modified in October 1959 by the parties in certain respects, chiefly in that Kates thereafter remitted sums against invoice amounts. At the time the modified agreement became effective the sales agent was indebted to claimant for unremitted amounts owed for merchandise already sold and for merchandise on hand which would be sold in the future. Since the modified arrangement instituted payments against invoices the aforementioned indebtedness would not be directly retired by these payments. However, because the payments against invoices did not permit a deduction for those expenses chargeable to claimant the payments were in excess of the amount for which Kates was responsible to its principal, THE KNOX COMPANY. Because of this factor it was anticipated that the unremitted balance due claimant would be liquidated over an extended period. The expenses chargeable to claimant were reported by Kates on a monthly basis and these reports are a part of the record of this claim.

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The record also contains the affidavit of Mr. Jose Kates, a partner in the Cuban agent, copies of accounting reports submitted by Kates, copies of sales and stock reports submitted by Kates each month, and a series of invoices bearing dates throughout the period April 1959 to July 1960.

The claim is presented in two parts. The first part relates to sales made by Kates from May 1959 through August 1960, and is computed by claimant as follows:

Sales and other charges for which Kates is responsible	\$155,789.62
Less expenses chargeable to claimant	<u>43,410.86</u> \$112,378.76
Less amount remitted by Kates	<u>64,143.76</u> \$ 48,235.00
Less a credit balance in favor Kates as of April 30, 1959	<u>536.75</u> \$ 47,698.25

The Commission finds that the facts as asserted by claimant with respect to this portion of the claim are supported by the evidence of record and finds that on August 31, 1960, Kates was indebted to claimant in the amount of \$47,698.25 for the proceeds of merchandise which had been sold by Kates in Cuba on behalf of claimant.

The other portion of the claim is based on goods sold to Kates on open account, part of which was in Kates' possession and part which was in transit as of August 31, 1960. The inventory amounts are reflected in the monthly Stock and Sales Report for the period ending August 31, 1960, submitted to claimant by Kates and included in the record of the claim. The goods in transit are reflected in invoice Nos. 7620 and 7637 which are also a part of the record.

The record reflects that, based upon the prices for which Kates was responsible to claimant for the individual items, the merchandise on hand and in transit amounted to a value of \$21,551.33.

Claimant has indicated that Kates has not billed it for the duty and landing charges on the goods in transit or for these charges with respect to the merchandise shipped under invoice No. 7591 which arrived in Cuba in August 1960. The evidence supports claimant's assertion that these charges averaged approximately 12% of the invoice amount of three other invoices during the period preceding the shipments in issue. Accordingly, the Commission finds that a reasonable deduction from the value of the goods in this portion of the claim is 12% of the invoice amount of the three shipments. This is reflected as follows:

<u>Invoice No.</u>	<u>Amount</u>
7591	\$10,391.50
7620	10,391.50
7637	13,846.50
	<u>34,629.50</u>
	x 12%
	<u>\$ 4,155.54</u>

Accordingly, the Commission finds that the claim of \$21,551.33 should be reduced by \$4,155.54, the amount of duty and landing charges attributable to claimant; and concludes that as of August 31, 1960, Kates was indebted to claimant in the amount of \$17,395.79 for merchandise on hand and goods in transit.

Claimant asserts that its agent Kates was intervened in October 1960. Claimant's assertion is supported by an affidavit of September 2, 1966, by Jose Henry Kates, the principal partner of Kates, and his letter to a third party under date of December 17, 1960.

In addition, the record includes a translation of a Resolution of the Cuban Government which was published in the Official Gazette on June 29, 1961. The Resolution provided for the nationalization of various enterprises which had been placed under the supervision of the Cuban Government pursuant to the principles of Law 890 of October 13, 1960. Adolph Kates & Son appears as one of the enterprises nationalized according to the terms of this Resolution.

Based upon the affidavit of Jose Henry Kates, his December 17, 1960 letter which indicates that the effective control of the business had

been assumed by the administrator appointed by the Cuban Government, and the information in the June 29, 1961 Resolution that the Cuban debtor had been placed under supervision pursuant to Law 890 of October 13, 1960, the Commission finds that this enterprise was intervened by the Government of Cuba on October 14, 1960, the day after the enactment of Law 890.

On the date of intervention the Cuban agent, Kates, was indebted to claimant in the amount of \$65,094.04 for proceeds held on behalf of claimant and goods sold to Kates. Accordingly, the Commission finds that claimant's property was lost as a result of the intervention by the Government of Cuba and that, in the absence of evidence to the contrary, the loss occurred on October 14, 1960 as to \$65,094.04.

The Commission has decided that in payment of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be allowed at the rate of 6% per annum from the date of loss to the date of settlement. (See the Claim of Lisle Corporation, FCSC Claim No. CU-0644).

Accordingly, the Commission concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from the date on which the loss occurred, to the date on which provision are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that THE KNOX COMPANY suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Sixty-Five Thousand Ninety-Four Dollars and Four Cents (\$65,094.04) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

OCT 4 1967

Edward D. Re

Edward D. Re, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

LaVern R. Dilweg

LaVern R. Dilweg, Commissioner

CERTIFICATION

This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on 11 6 NOV 1967

Francis M. Mather
Clerk of the Commission

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)

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